IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 20TH MARCH 2007 / 29TH PHALGUNA 1928

Crl.MC.No. 712 of 2007()

CC.513/2006 of JUDL.MAGISTRATE OF FIRST CLASS, VADAKARA

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PETITIONER: ACCUSED

K.M.MUSTHAFA, S/O. ABDULLA,
PARADISE, CHALAKKARA P.O., VIA - THALASSERY.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS: COMPLAINANT & STATE

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1. SUB INSPECTOR OF POLICE,
VADAKARA POLICE STATION, VADAKARA.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 20/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.712 of 2007

Dated this the 20th day of March 2007

O R D E R

The petitioner is said to be the sole accused in a prosecution initiated under Section 379 I.P.C. The defacto complainant was allegedly travelling in a bus. The bag belonging to him was allegedly thieved by some unknown person in the course of the journey. The defacto complainant filed a complaint three days after the alleged theft. Crime was registered. Investigation commenced. In the course of investigation, the stolen article was found to be available in the possession of a doctor, who handed it over to the police. The doctor explained that it is the petitioner who handed over the stolen article to the doctor. Final report has been filed. Cognizance has been taken against the petitioner.

2. The learned counsel for the petitioner submits that the proceedings initiated against the petitioner is liable to the quashed by invoking the powers under Section 482 Cr.P.C. What is the ground?

3. The learned counsel for the petitioner submits that in so far as there is no direct evidence to show that the petitioner was present in the bus from which the article was removed, offence of theft cannot be validly alleged against him. He further points out that recovery was not from his personal possession and in these circumstances, the statement of the doctor, who allegedly handed over the alleged stolen article to the police, cannot also be reckoned as any relevant and valid contumacious circumstances against him to infer culpability.

4. I shall carefully avoid any detailed expression of opinion on the disputed facts. Suffice it to say that I find no merit whatsoever in the contention that the allegations, even if accepted in toto, do not reveal any offence against the petitioner. As to whether the defacto complainant can be believed when he states that the article found in the possession of the doctor were thieved from his possession or whether the doctor's statement that the article was handed over to him by the petitioner can be accepted or not and also as to what presumptions of prudence can follow if such pieces of evidence were believed are all matters which must be considered by the trial court in the

course of the trial. It would be presumptuous to hazard any opinion on the question of acceptability of such evidence which the prosecution relies on or to hazard any opinion on the possible inferences which can safely be drawn from such evidence, if accepted.

5. The mere possibility of the accused securing an acquittal, even if it be held to be real, is no reason for the court to invoke its powers under Section 482 Cr.P.C to quash the proceedings. Charges have already been framed against the petitioner, it is submitted.

6. The above discussions lead me to the conclusion that there is absolutely no justification in the prayer for invocation of the powers under Section 482 Cr.P.C to bring about a premature termination of the prosecution against the petitioner.

7. In the result, this Criminal Miscellaneous Case is dismissed. Needless to say, the dismissal of this Criminal Miscellaneous Case will not in any way fetter the rights of the petitioner to raise all appropriate, relevant and unnecessary contentions before the learned Magistrate in the course of the trial. I have chosen only to take the view that the powers under

Section 482 Cr.P.C do not deserve to be invoked at this stage.

8. The learned counsel for the petitioner finally submits that the warrant of arrest issued by the learned Magistrate is chasing the petitioner. The petitioner wants to surrender before the learned Magistrate, submits the learned counsel for the petitioner. He can do the same and no directions of this court is necessary in that regard. Needless to say, if the petitioner surrenders before the learned Magistrate and applies for bail, the learned Magistrate must proceed to consider such application for bail on merits, in accordance with law and expeditiously - on the date of surrender itself unless there are compelling reasons.

(R.BASANT, JUDGE)

jsr

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PA to Judge

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006